UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Argued April 23, 1973

Before

Hon. LATHAM CASTLE, SR. Circuit Judge

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. Leonard P. Moore,* Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee	) Appeal from the United States District Court for the Eastern District of Illinois,
No. 72-1823	) Crim. 71-121
LINDEN ODELL KAISER, Defendant-Appellant.	) William G. Juergens, Judge.

O R D E R

Defendant, Linden Odell Kaiser (Kaiser) appeals from his conviction of all three counts of an indictment charging him with (1) theft from an interstate shipment and aiding and abetting same (18 U.S.C. §§ 2312, 2), (2) receiving and concealing a stolen motor vehicle and aiding and abetting same (18 U.S.C. §§ 2313, 2) and (3) con-

*United States Circuit Judge of the Second Circuit sitting by designation.

spiracy to commit theft from an interstate shipment (18 U.S.C. § 371).

On this appeal Kaiser raises two points of error -- that he was prejudiced by a reference to his prior criminal record and that certain business records were improperly admitted against him.

Kaiser claims that the district court erred in not granting a mistrial after the government inadvertently elicited a statement by the chief prosecution witness which included an oblique reference to the fact that Kaiser was a "con." The cases relied upon by Kaiser, Rinaldi v. United States, 301 F.2d 576 (2d Cir. 1962) and United States v. Tomaiolo, 249 F. 2d 683 (2d Cir. 1957) are not dispositive of this issue. Since this reference was unintentionally brought out by the government and since it was not a direct statement to the effect that Kaiser had been previously convicted, we believe that McIntosh v. United States, 309 F. 2d 222 (D.C. Cir. 1962) and United States v. Stromberg, 268 F. 2d 256 (2d Cir. 1959) provide more helpful guidance.

In each of these cases there were references to prior convictions of defendant. Since these references were both inadvertent and that in McIntosh was also quite oblique, the courts in these cases held that the respective defendants had not been so prejudiced that a new trial was required. We agree with the district court that the reference to Kaiser as a "con" did not warrant the granting of a mistrial.

The conviction is affirmed.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Argued April 23, 1973

Before

Hon. LATHAM CASTLE, Senior Circuit Judge

Hon. LEONARD P. MOORE, Senior Circuit Judge
(Second)

Hon. WALTER J. CUMMINGS, Circuit Judge

United States of America, Plaintiff-Appellee	)	Appeal from the United States District Court for the Eastern District of Illinois.
No. 72-1823 vs.	)	
LINDEN ODELL KAISER, Defendant-Appellant.	)	Crim. 71-121 Juergens, Judge

IT IS ORDERED that the petition for rehearing in the above entitled appeal, be and the SAME IS HEREBY, DENIED.